

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON EUGENE HUNTER,

Plaintiff,

v.

BUNGAY, et al.,

Defendants.

No. 2:22-cv-02048-DAD-CKD (PC)

ORDER DECLINING TO ADOPT FINDINGS  
AND RECOMMENDATIONS DISMISSING  
THIS ACTION

(Doc. No. 7)

Plaintiff Brandon Eugene Parker is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 19, 2023, the assigned magistrate judge issued findings and recommendations recommending that the action be dismissed without prejudice as plaintiff had failed to file an amended complaint within thirty days of his complaint being dismissed. (Doc. No. 7.) The pending findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.*) Plaintiff filed his objections on May 22, 2023. (Doc. No. 8.) Therein, plaintiff states that he filed a timely amended complaint and did not know why it was not received by the court. (*Id.*)

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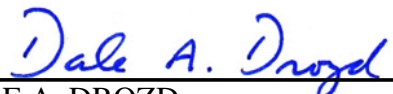
1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
2 *de novo* review of the case. The undersigned notes that the findings and recommendation issued  
3 almost 11 months ago on April 19, 2023, put plaintiff on notice that the court never received an  
4 amended complaint from him following the issuance of the March 3, 2023 screening order.  
5 Despite being put on notice of that fact, and despite the passage of that long period of time,  
6 plaintiff still has not filed an amended complaint in this action and has failed to explain his failure  
7 to do so. Nonetheless, and out of an abundance of caution, having carefully reviewed the entire  
8 file, and in light of plaintiff's representation that he mailed his amended complaint to the court for  
9 filing but the court did not receive it, the court will give plaintiff one final opportunity to file an  
10 amended complaint within fourteen (14) days after service of this order. The court therefore  
11 declines to adopt the pending recommendation that the action be dismissed without prejudice at  
12 this time.

13 Accordingly,

- 14 1. The undersigned declines to adopt the April 19, 2023 findings and  
15 recommendations (Doc. No. 7);
- 16 2. Plaintiff shall file an amended complaint within fourteen (14) days after service of  
17 this order; and
- 18 3. The matter is referred back to the assigned magistrate judge for further  
19 proceedings consistent with this order.

20 IT IS SO ORDERED.

21 Dated: March 8, 2024

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23 DALE A. DROZD  
24 UNITED STATES DISTRICT JUDGE  
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